

**FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF THE MEETING
JUNE 1, 2021**

**CALL TO ORDER
6:00 PM**

A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:01 p.m. at the 2nd Floor Conference Room of the South Campus Building, 40 11th Street West, Suite 200, Kalispell, Montana. Board members present were Ole Netteberg, Gina Klempel, Tobias Liechti, Cal Dyck and Roger Noble. Mark Mussman, Donna Valade, Erik Mack, and Laura Mooney represented the Flathead County Planning & Zoning Office. There were 13 members of the public in attendance at the meeting and members of public in attendance over Zoom.

**APPROVAL OF
MINUTES
6:00 PM**

Klempel motioned, seconded by Liechti, to approve the May 4, 2021 minutes as written.

The motion passed unanimously by quorum.

**PUBLIC COMMENT
(Public matters that are
within the jurisdiction of the
Board 2-3-103 M.C.A)
6:01 PM**

None

**JEWEL BASIN
HOLDINGS, LLC
(FCU-21-05)
6:01 PM**

A request from Jewel Basin Holdings, LLC with assistance from Jeremy Prather for a conditional use permit to construct a hotel on property within the Bigfork Zoning District. The applicant is proposing to build an eight-unit hotel to be used for short-term accommodation located at 241 Sportsman Lane near Bigfork, MT. The parcel contains approximately 0.69 acres.

**STAFF REPORT
6:01 PM**

Laura Mooney reviewed the Staff Report FCU-21-05 the board.

**BOARD QUESTIONS
6:03 PM**

None

**APPLICANT
PRESENTATION
6:03 PM**

Jeremy Prather, 835 # 23rd Street, was the applicant. He did not have anything to add but was available for questions.

**BOARD QUESTIONS
6:04 PM**

Liechti asked about the parking layout and stormwater mitigation. Prather said that he would have to build it into the plan. The plan was to have it drain into the greenspace. Liechti confirmed that they would have to go through a COSA rewrite and Prather confirmed that was correct.

**AGENCY COMMENTS
COMMENT
6:06 PM**

No public agencies were present to comment. Written comments were reviewed in the staff report.

**PUBLIC COMMENT
6:06 PM**

None

**BOARD DISCUSSION
6:06 PM**

Noble asked staff what the duration of short-term accommodation was. Staff replied 30 days or less. Noble asked how it would be monitored. Staff replied it would be advertised as such.

Netteberg asked if there was an office and how was it rented. Dyck followed up and asked Prather where the office would be located for people to check in. He explained that it would be a remote check in with a remote lock. There will be no office on site. There would be someone local available 24/7 to respond to any questions or emergencies, along with custodial or janitorial clean up. The concept would be similar to VRBO but they planned on going through their own website and running it as a hotel.

Klempel asked about handicap accommodations since it was a hotel. Staff said that it would be addressed at the state level but they had more parking than what would be required. Dyck asked Prather if any of his units would be ADA compliant. Prather said that there were no stairs and all units should be accessible for ADA compliance.

Dyck clarified that it would be essentially an unmanned motel, utilizing the technology these days. Prather said that was correct. It would be similar to a VRBO but because of the number of units, would be considered a hotel.

**MAIN MOTION TO
ADOPT F.O.F.
(FCU-21-05)
6:14 PM**

Netteberg made a motion, seconded by Klempel, to accept Staff Report FCU-21-05 as Findings-of-Fact.

**ROLL CALL TO ADOPT
F.O.F.
(FCU-21-05)
6:14 PM**

Motion passed unanimously on a roll call vote.

**MOTION TO APPROVE
(FCU-21-05)
6:15 PM**

Noble made a motion, seconded by Liechti, to approve FCU-21-05.

**BOARD DISCUSSION
6:15 PM**

Noble wanted to add some conditions, starting with making sure that there were units that would be ADA compliant.

Mussman said that would be addressed at the state level. Flathead County did not have a building department and would not be able to address that.

Noble wanted to know how the county would make sure that they would not exceed 30 days. Mussman replied they would need to modify their approval if they wanted to amend their permit. This was a request for a hotel and will proceed as such.

**ROLL CALL TO
APPROVE
(FCU-21-05)
6:17 PM**

Motion passed unanimously on a roll call vote.

**BUDDY BRAACH
(FZV-21-04)
6:18 PM**

A request by Buddy Braach for a variance to Section 3.39.050(2) of the Flathead County Zoning Regulations (FCZR), to the setback requirements. The subject property is zoned 'Lakeside' and is located at 277 Bierney Creek Road in Lakeside, MT, within the Lakeside Zoning District. The property contains approximately 0.172 acres.

**STAFF REPORT
6:18 PM**

Laura Mooney reviewed the Staff Report FZV-21-04 for the board.

BOARD QUESTIONS
6:19 PM

None

**APPLICANT
PRESENTATION**
6:20 PM

Buddy Braach, 709 W. Eastman St., was the applicant and explained his intent behind the variance request. It was a skinny lot that was 50' wide. He was trying to creating something that was functional and appealing.

PUBLIC COMMENT
6:21 PM

None

BOARD DISCUSSION
6:21 PM

Liechti asked about the septic system and the draining field as it appeared to be right where the proposed building was located. Braach said they would be connecting to city sewer.

Klempel was having a hard time making the variance fit because it did not appear to meet the criteria for a variance.

Noble agreed and was struggling with the same.

Netteberg asked if there was a vacant lot next to the property. Braach confirmed there was.

Liechti asked the board to consider that they had previously approved after-the-fact variances that did not meet criteria. He appreciated that this one was being requested before they had built the building.

The board decided to go through finding of facts to try and make it work. Dyck asked the applicant if they could still put a guest house there if it was reconfigured. He said he probably could.

The board continued to dissect the findings of facts at great length; going through each to decipher whether they agreed with them or not.

**MAIN MOTION TO
ADOPT F.O.F.
(FZV-21-04)**
6:35 PM

Liechti made a motion, seconded by Klempel, to accept Staff Report FZV-21-04 as Findings-of-Fact.

**ROLL CALL TO ADOPT
F.O.F.
(FZV-21-04)
6:35 PM**

Motion passed unanimously on a roll call vote.

**MOTION TO DENY
(FZV-21-04)
6:36 PM**

Liechti made a motion, seconded by Klempel, to deny FZV-21-04.

**ROLL CALL TO DENY
(FZV-21-04)
6:36 PM**

Motion passed unanimously on a roll call vote.

**LYNN LUND
(FCU-21-07)
6:37 PM**

A request by James Evans III on behalf of Lynn Lund for a conditional use permit to construct a 'Guest House' on property located within the Little Bitterroot Lake Zoning District, zoned 'LBL Little Bitterroot Lake.' The property is located at 700 Lodgepole Drive, Marion, MT and contains approximately 8.06 acres.

**STAFF REPORT
6:37 PM**

Donna Valade reviewed the Staff Report FCU-21-07 for the board.

**BOARD QUESTIONS
6:40 PM**

Klempel wondered if they had started construction. Valade replied they had not. Klempel wondered what the size of the main house would be. Valade referred to the staff report; the main house would be slightly larger than the guest house. She reminded them that a guest house did not have the same size restrictions as an accessory dwelling unit. She believed the main house would be approx. 1400-1800 sq. ft., per a conversation she had on the phone.

Klempel was surprised by the fact that generally a main house would be built first and then a guest house would be constructed. Valade said she believed the plan would be to construct both at the same time.

**APPLICANT
PRESENTATION
6:43 PM**

None

PUBLIC COMMENT
6:44 PM

Robert Morrow, 29 Larch Canyon Trl, was concerned and asked to see the site map. He made no further comment.

BOARD DISCUSSION
6:45 PM

Noble questioned staff about the condition of approval regarding that it must be built to the specifics of the site plan, however, the site plan was “lean”. Valade said the main thing she was looking for was if the placements came into compliance with the zoning regulations of Little Bitterroot Lake. She believed there would be constraints as to where they could put it due to draining issues. Noble said it sounded challenging.

Liechti said the draining issues would be addressed during the COSA rewrite.

Klempel wanted to see the main house be constructed first because she was concerned they could make it larger than what was being presented in the application. Noble said she could add a condition. Klempel said it was hard to do based on the site plan submitted. Dyck suggested they add a condition that they have to follow the site plan as submitted. Dyck felt the board was limited when given such a limited site plan.

Valade said, in her conversations with him, the applicant was working with a professional to draft out a plan. She did not believe there was a coverage restriction. Valade explained the conditions that were placed on it, based on the regulations. It was a permitted use and would rarely come before the BOA. Dyck said there was confusion because the application was not thorough and they could deny it because it was fuzzy.

Mussman reminded them that they were deciding was the use of a guest house. There were regulations for a guest house. There were setback requirements within Little Bitterroot. Mussman brought up that, if they did build a larger house but in the general location, there was a good chance that the findings of fact would not be affected. They did not need to consider size because size was not regulated in the regulations. The only “size” limitation was that the guest house could not have more than 2 bedrooms. If the square footage was altered, it would not alter the FOF and conditions of approval. He agreed it was better to have a more detailed site plan but what they were considering was the conditional use permit for a guest home.

MAIN MOTION TO
ADOPT F.O.F.
(FCU-21-07)
6:52 PM

Netteberg made a motion, seconded by Klempel, to accept Staff Report FCU-21-07 as Findings-of-Fact.

**ROLL CALL TO ADOPT
F.O.F.
(FCU-21-07)
6:53 PM**

Motion passed unanimously on a roll call vote.

**BOARD DISCUSSION
6:53 PM**

Dyck was concerned about the potential of storm drainage and if it needed an additional condition. Liechti answered it would be covered through DEQ approval. Noble said they would have to go through COSA rewrite.

**MOTION TO APPROVE
(FCU-21-07)
6:53 PM**

Noble made a motion, seconded by Klempel, to approve FCU-21-07.

**ROLL CALL TO
APPROVE
(FCU-21-07)
6:54 PM**

Motion passed unanimously on a roll call vote.

**TRAVIS AND KRISTI
BRUYER
(FACU-21-10)
6:54 PM**

A request from Travis & Kristi Bruyer for the establishment of 'Short-term Rental Housing' on property located within the Lower Side Zoning District. The applicant is requesting the permit to allow stays of less than 30 days on the subject property located at 89 Trails End near Kalispell, MT. The parcel is zoned R-2 (One Family Limited Residential) and contains approximately 0.46 acres.

**STAFF REPORT
6:54 PM**

Erik Mack reviewed the Staff Report FACU-21-10 for the board.

**BOARD QUESTIONS
7:01 PM**

Liechti confirmed that FOF #7 was the only negative finding and asked for more detail. Mack said they had an application for water services within their Home Owner Association (HOA). Each adult user would have to fill one out. He did not know how that would work with short term renters or what it would require. He differed to the applicants.

**APPLICANT
PRESENTATION
7:02 PM**

Travis Bruyer and Kristi Bruyers, 1013 N Somers Rd., were the applicants and discussed that they had purchased the property with the intent of having a short term rental during the summer time and long term rental during the winter months.

Kristi explained that they did need clarity on the property line because it was based on hearsay from the person who sold them the property. She also addressed the water findings and said that she had submitted the application.

She understood the ordinance to be in regards to the water payment and she had prepaid the water payment through the whole year. The only thing that she had received from the HOA was a packet on how to treat the water.

Travis said there had been a lot of questions that have come up and they have tried to accommodate them. He had 30 years' experience in law enforcement, specifically in Flathead County. He said crime in that particular area was not from people visiting but from locals who lived here. There was no evidence that the crime rate would go up. He discussed that they found flyers thrown about their property and somebody had tried to break into their shed. They were trying to maintain as best as they could. There was no substantial evidence that crime rate went up or septic system run afoul by short term rentals.

PUBLIC COMMENT
7:07 PM

Rita Blair, 77 Trails End, spoke in opposition of the application. She was president of the HOA. Their main concern was that it was going to be an unmanned short-term rental. She said the CCandRs stated all homes within the HOA were for residential purposes only and the HOA saw it as being commercial. She was concerned that it was within 90' of the well. They were worried that vacationers who would run "a muck". If something were to happen to their ground water, it would affect 96 homes that were fed by the well. She reiterated that they were concerned that it would be unmanned with no manager on site. She was concerned that a short term rental would increase traffic. She was concerned that the number of people would staying would exceed the approved septic amount.

Brian Hansen, 35 Silverleaf Dr., spoke in opposition of the application. He felt adding resort facilities was out of place in a residential area.

Barbara Fenchak, 38 Trails End, spoke in opposition of the application. She was concerned about any threat to the water. She was also concerned about the children's safety and the traffic impact. She discussed that they were not permitted to have a guest house or ADU and ask that they protect them by not allowing a short term rental.

George Chapman, 93 Trails End Dr., spoke in opposition of the application. He lived right across from the property. He agreed with the previous statements. He questioned the year the home was built. He discussed covenants. He discussed road maintenance and was concerned about the extra use of the roads. He was frustrated that he was told it would be a long term rental and now it had changed. He did not want his property jeopardized by a short term rental.

Mary Skyba, 37 Green Tree Dr., spoke in opposition of the application. She wanted to feel safe and not worry about having new people [occupying] every week.

Liz Patefield, 23 Silver Leaf Dr., spoke in opposition of the application. She felt

a short term rental did not fit in the community. She felt the neighborhood would be managing the STR because the owners did not live there. She was concerned about the privacy and the negative traffic impact, loud and late night parties, vandalism and littering. She was concerned about vandalism and having it affect the water source.

Ron Hartsoch, 27 Silver Leaf Dr., spoke in opposition of the application. He said they owned the community; they paid for the wells and road maintenance. He was concerned that they would be “monitoring” the VRBO. He asked that the board deny.

BOARD DISCUSSION
7:22 PM

Noble this was an interesting one. Many of the finding of facts were favorable to the applicant. There were things the board could not consider in their decision, including CCandRs and HOA’s, because it was beyond their jurisdiction. He estimated that at least 1/3 of the neighborhood was in opposition. The request was not compatible with the neighborhood plan and desires. He felt there would be a negative impact on the neighbor, including traffic impact and safety concerns. It had a commercial rather aspect rather than residential. He would have a difficult time approving it.

Netteberg agreed with Noble. He did not feel it was compatible with the neighborhood because it was a long term neighborhood and it did not fit.

Liechti questioned the HOA President and asked if it was a requirement of every adult to fill out a water usage form. Liechti wondered if every adult who occupied a unit, had to fill out the application form. She confirmed this was so.

Klempel agreed that short term rentals were commercial in nature, due to the fact they had to pay commercial taxes.

Dyck concurred with Noble in that it was not a compatible use in this neighborhood and community. There were multiple concerns over safety.

The board deciphered which findings of fact they were in agreement with and which they were not and made suggestions of amendments on Findings of Fact #8, #9, #10, #11, and #12.

MAIN MOTION TO
ADOPT F.O.F.
(FACU-21-10)
7:34 PM

Noble made a motion, seconded by Klempel, to accept Staff Report FACU-21-10 as Findings-of-Fact, as amended.

**ROLL CALL TO ADOPT
F.O.F. AS AMENDED
(FACU-21-10)
7:34 PM**

Motion passed unanimously on a roll call vote.

**MOTION TO DENY
(FACU-21-10)
7:34 PM**

Dyck made a motion, seconded by Liechti, to deny FACU-21-10.

**ROLL CALL TO DENY
(FACU-21-10)
7:34 PM**

Motion passed on a 4-1 roll call vote. Liechti dissented.

**DAVID & MELISSA
RUBIN
(APPEAL 21-01)
7:35 PM**

An appeal by Denman Construction on behalf of David & Melissa Rubin, regarding a decision made by the Zoning Administrator to not accept an application for a conditional use permit for a boathouse/aircraft hangar to be located at 761 Delrey Road, near Whitefish, MT within the Rural Whitefish Zoning District. The Zoning Administrator Interpretation stated it was never the intention in either the Flathead County Zoning Regulations nor the Flathead County Lake and Lakeshore Protection Regulations to recognize a lake as a landing field. The appellant argues that it is legal for aircrafts to land and takeoff from Whitefish Lake, technically having Whitefish Lake serve as a landing field.

**BOARD CONFLICT OF
INTEREST
7:35 PM**

Netteberg recused himself because he had known the appellants' representative, Denman, for many years.

**APPELLANT
PRESENTATION
7:35 PM**

Travis Denman explained the basis of his appeal; it was a gray area of what constituted a landing strip. They had been working on this project for a couple of years, under the basis of a discussion they had 3 years ago where they were under the impression that this was a conditional use. He understood where the director was coming from; the difficult thing was intent vs. definition. The applicant could land and take off and dock on Whitefish Lake. They were allowed to build a building. They were allowed to leave the plane out but they were not allowed to store the plane within the setbacks. Because Whitefish Lake was in Whitefish jurisdiction, their intent was to get a rail system to get the plane into the building. Whitefish City did not have a problem. The problem was the 20' rail system. The building was in conformance. The operation and usability of the lake was a landing zone. What it came down to was the intent vs. the definition. There was nothing in the regulations that truly stated that the lake was not considered a landing zone.

BOARD QUESTIONS
7:43 PM

None

STAFF REPORT
7:44 PM

Mark Mussman reviewed the Staff Report Appeal 21-01 for the board.

BOARD QUESTIONS
7:48 PM

Noble asked if the applicant would need to come in front of the board for a conditional use permit for a hanger associated with an airport. Mussman said it was an administrative decision. Noble confirmed the applicant would still need to get a lakeshore permit. Mussman confirmed that they would and explained that the City of Whitefish had annexed Whitefish Lake.

Dyck asked if there should be a conversation with the Whitefish City Council since the City of Whitefish had annexed the lake. Mussman believed it allowed rails. If it was outside of the LPZ, then the City of Whitefish would have no say. Dyck explained that the plane would land in the City of Whitefish [on the lake] but when the plane was getting pulled out, it would be considered county.

Dyck felt it was splitting the finest hair. Mussman said the decision was whether or not the BOA would consider all lakes in Flathead County as airports/landing fields. They did not have a specific definition of landing field.

The only hurdle that the appellant had to overcome is a City of Whitefish permit for the railing.

Mussman said that it was not an issue on whether or not they could land or take off. The question was whether or not it was an airport. Dyck questioned if it was because he wanted to store the plane in the LPZ; a hanger associated with an airport.

Liechti wondered if they were calling it a hanger, then it was the issue but if they called it an ADU then that would make it ok.

They continued to discuss these things at great length.

**APPLICANT REBUTTAL
AND CONTINUAL BARD
DISCUSSION**
7:56 PM

Denman said that was his point; he could have snuck that by. He could have called it a boat house but they wanted to be upfront and honest with their intent. "Landing field" was the point of discussion.

Dyck said it was a really fine line.

BOARD DISCUSSION
7:57 PM

Klempel asked about variances that have come in that were for storage with vehicles with fuel. Mussman said that there have been conditional use permits required for mini storage units for vehicles with fuel, however, Mussman also said that people stored their cars in the garages however, in Montana, mini storage units, in certain zoned areas, cannot store certain things; including internal combustion engines.

Noble questioned, in his decision process, if Mussman had contacted the county attorneys. Mussman said he had an email conversation with Dave Taylor, along with the city attorney, and discussed the definition of airport. If Whitefish Lake was considered an airport, then it was designed and intended to be used as an airport. The fact that it *could* be used as a different question. Just like any highway. If he was flying and had to put down on HWY 93, he could do that, but it wasn't designed and intended.

BOARD DISCUSSION
8:06

Noble said planes landed and took off all the time on the lake, so he wondered what the difference was.

Dyck did not see how they could restrict one individual when others did it all the time. He felt it needed more clarification from the county or state. He saw the potential of this happening a lot.

Noble felt it was a legal decision, more than a BOA decision. He felt they needed more advice. Dyck agreed.

Klempel agreed with the previous comments but felt Noble had a valid point [that it was more of a legal decision]. They were looking at county regulations and definitions. She agreed that they were going over the line by stretching their necks out in granting permission.

Dyck reiterated that the main issue was if lakes were considered airports.

Denman interjected [the point was] if the lake was considered an airport/landing

field.

Mussman said they did not have a definition for landing field.

Noble pointed out that, regardless the guy was going to land the plane on the lake and would pull it into an ADU.

They continued to discuss this at great length.

**MOTION TO DENY
(APPEAL 21-01)
8:25 PM**

Liechti made a motion, seconded by Klempel, to deny Appeal 21-01.

**ROLL CALL TO
APPROVE
(APPEAL 21-01)
8:25 PM**

Motion passed unanimously on a roll call vote.

**OLD BUSINESS
8:28 PM**


None

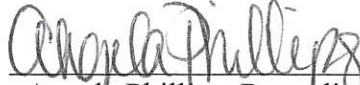
**NEW BUSINESS
8:28 PM**

Liechti brought up that the Zoom meetings are becoming an issue [specifically during public comment]. He discussed his experience in Helena where people had to register prior to speaking and that it helped keep the meeting organized. Noble also discussed how other offices ran their Zoom meetings.

**ADJOURNMENT
8:28 PM**

The meeting was adjourned at approximately 8:28 pm on a motion by Klempel. The next meeting will be held at 6:00 pm on July 6, 2021.


~~Cal Dyck, Chairman~~
Roger A. Noble Vice Chair


Angela Phillips, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED 08/13/2021